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IN THE

Supreme Court of the United States

WILLIAM O. SCHISM and ROBERT L. REINLIE,
Petitioner,

v.

UNITED STATES,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

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BRIEF *AMICUS CURIAE* ON BEHALF OF THE WEST POINT CLASS OF 1959 IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*

Pursuant to rule 37.2 of this Court, the West Point Class of 1959 respectfully submits this brief as *amicus curiae*.[1] Presently there are about 413 living members of this class.

[1] Amicus has received written consent of the parties to file this brief, and said consents have been filed with the Clerk of the Court. In accordance with Rule 37.6, disclosure is hereby made that no counsel for a party authored this brief in whole or in part and that no monetary contributions were made to the preparation or submission of this brief other than by *amicus curiae*, their members or their counsel.

About 654 members entered military service on July 5, 1955, and about 280 retired after serving at least 20 years on active duty with the U.S. Army, the U.S. Air Force and the U.S. Marine Corps. Included are six Rhode Scholars, a Heisman Trophy winner in football, 23 general officers (two of 4 star rank and three of 3 star rank), two Medal of Honor awards, two Distinguished Service Cross awards, a former Secretary of the Veterans Administration and Assistant Secretary of the Army, a former Deputy under secretary of the Department of Health, Education and Welfare, and the current President of the Citadel. There are many senior business executives, medical doctors, attorneys, and university professors included. Those who retired and are still living stand to benefit directly from this Honorable Court's favorable decision, and will be adversely impacted by an unfavorable decision. The undersigned attorney is a retired member of the *Amicus*.

REASONS FOR GRANTING THE PETITION

Amicus joins with Petitioner in their Reasons for Granting the Petition, and add the following additional rationale.

When *Amicus* were commissioned as 2d Lieutenants in June of 1959, their base pay was $222.30 per month, their subsistence allowance was $47.88 per month; and once married, their quarters allowance was $85.50 per month. Even in 1959, these sums left little over for items other than bare necessities, and certainly could not provide for medical bills. As admitted by Respondent, *Amicus* were promised free medical care for themselves and their dependants while on active duty, and a continuation of free medical care for themselves and their dependants after retirement, should they manage to retire. Initially, these promises were kept. At first, free medical care included prescription drugs, prescription eyeglasses and dental care. Over time, things began to change. Prescription eyeglasses were the first to go, followed by dental care, and some prescription drugs. Today, under

current federal law, retired *Amicus* over 65 have MEDICARE as their primary insurer and TRICARE as their secondary insurer, but must purchase Medicare Part B as a condition for having TRICARE as their secondary. This is not free.

Respondent argues that the various statutes concerning free medical care refer to available space in military medical facilities. Respectfully, *space* does not appear to be the only issue here. When *Amicus* entered West Point, there was a draft in effect. During the 1970's, the Defense Department went to the all-volunteer force. Costs required to encourage medical personnel to enter military service and remain on active duty are substantial. Additionally, Base Closures have over time closed military medical facilities. It appears ingenious to argue that because it is expensive to recruit and retain military medical personnel and because military hospitals have been closed, *space* for military retirees and their dependants is no longer available. This would be like Ford Motor Company refusing to honor their new car warranty program in New York because Ford elected to close their maintenance facilities in New York.

Respondent appears to be arguing that the Anti-Deficiency Act can be applied retroactively to restrict a Commander in Chief's power to authorize recruiters to make the offer of free lifetime medical care, and the Court of Appeals apparently accepted this argument. If true, this would make the Anti-Deficiency Act an ex post facto law, which is expressly prohibited by Article 1, Section 9, of the Constitution of the United States.

Amicus, while cadets at West Point, learned and followed an Honor Code. This code states specifically that cadets shall not lie, cheat or steal, or tolerate those who do. This Code becomes part of a cadet's total being, both while a cadet and after graduation, for life. *Amicus* does not think it unreasonable for Respondent, who *Amicus* swore to protect and defend, to follow the same Code as it pertains to promises

made. To expect otherwise would mean that our " . . . one nation, under God, . . . " is not to be believed. To *Amicus*, this is unthinkable.

CONCLUSION

As eloquently stated by Chief Judge Mayer the Federal Circuit Court of appeals in his stinging dissent to the *en banc* decision below:

> "Promises of lifetime medical care were made to military officers by military officials for more than 50 years. Likewise Congress knew, or certainly should be charged with knowing, . . . that the amounts it appropriated for military pay were diminished by the imputed value of medical care on active duty and after retirement . . . . "

Amicus knows this also, and respectfully requests that this Honorable Court grant Petitioner's request for a Writ of Certiorari.

Respectfully submitted,

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